

90-5 31①

Supreme Court, U.S.  
FILED

SEP 26 1990

JOSEPH F. SPANIOLO, JR.  
CLERK

No.

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THE SUPREME COURT OF THE UNITED STATES

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October Term, 1990

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ROBERT WOODS,

Petitioner,

vs.

LOUIS ROSENBERG,  
PAULA TEMPLETON, and  
SAUNDRA HOPFER,

Respondents,

---

Writ of Certiorari  
to the United States Court  
of Appeals for the Third Circuit

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PETITION FOR WRIT OF CERTIORARI

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Petitioner

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QUESTIONS PRESENTED

- I. WHETHER THE RESPONDENT, DISTRICT JUDGE LOUIS ROSENBERG, LACKED SUBJECT MATTER JURISDICTION TO STAY A STATE COURT EXECUTION?
- II. WHETHER A DISTRICT COURT JUDGE WHO ACTS IN CLEAR ABSENCE OF SUBJECT MATTER JURISDICTION IS NOT PROTECTED BY THE DOCTRINE OF JUDICIAL IMMUNITY?



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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT

To the Honorable, the Chief Justice and  
Associate Justices of the Supreme Court  
of the United States:

ROBERT WOODS, the Petitioner  
herein, prays that a writ of certiorari  
issue to review the judgment of the  
United States Court of Appeals for the  
Third Circuit, entered in the above  
entitled case on June 28, 1990.

OPINIONS BELOW

The Opinion of the United States  
District Court for the Western District  
of Pennsylvania is unreported and is  
printed in the Appendix hereto, infra,  
page A-1. The United States Court of

THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, the undersigned, a Notary Public in and for said State, do hereby certify that the within and foregoing is a true and correct copy of the original of the same, as the same appears from the records of said County.

Witness my hand and the seal of said County, at Dallas, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public in and for the State of Texas.

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas.

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Appeals for the Third Circuit did not issue an opinion. The Opinion of the United States Court of Appeals for the Third Circuit, at No. 89-3557, ruling on the Respondent's preliminary injunction, is printed in the Appendix at A-109.

### JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit sought for review was entered on June 28, 1990. No petition for rehearing was filed. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 2101(c) and Supreme Court Rule 20.2 which provide for the filing of a Writ of Certiorari intended to bring before the United States Supreme Court a judgment in a civil action for review from a United States Court of Appeals.



## STATUTES INVOLVED

This case involves the bankruptcy jurisdiction statute at 28 U.S.C. §1334

(a), (b) and (d) as follows:

28 U.S.C. 1334.

Bankruptcy Cases and proceedings.

(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under Title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising in or related to cases under Title 11.

\* \* \*

(d) The district court in which a case under Title 11 is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor of such case, and of property of the estate.

and 42 U.S.C. 1983 as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be

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subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."



## STATEMENT OF CASE

### a. The Bankruptcy Action:

The case from which the preliminary injunction arose began as an adversary proceeding related to an involuntary bankruptcy petition. The adversary proceeding involved a Motion for a Temporary Restraining Order filed by Joseph E. Hudak (hereinafter "Hudak"). A consent order (hereinafter the "Consent Order") was entered in the adversary proceeding on October 1, 1987. (A-12). The Consent Order limited contact between Hudak, and Robert Woods, (hereinafter "the Petitioner Woods"), Michael S. Geisler (hereinafter "Geisler") and Richard O'Brien, (hereinafter "O'Brien") along with other provisions, including a provision allowing the parties to pursue all legal claims. The involuntary



bankruptcy proceeding was dismissed on November 30, 1987. (A-19) On March 31, 1988 and on April 7, 1988, Hudak filed Motions for Contempt against the Petitioner Woods, Geisler, and O'Brien. Hearings on the said Motions for Contempt were held from June 7 through June 16, 1988. District Judge Louis Rosenberg (hereinafter "District Judge Rosenberg" ) issued an order (hereinafter the "Contempt Order") holding the Petitioner Woods, O'Brien, and Geisler, in contempt. The three above parties appealed the Contempt Order to the United States Court of Appeals for the Third Circuit. The United States Court of Appeals for the Third Circuit affirmed the Contempt Order of District Judge Rosenberg, in part, on June 30, 1989.



b. The state court proceedings and federal court injunction.

On June 21, 1989, in two (2) separate state court proceedings in the Court of Common Pleas of Allegheny County, Pennsylvania, at A.D. No. 1675 of 1988 and A.D. No. 1676 of 1988, two (2) non-jury trials were held before Judge Robert A. Doyle of said state court. The defendants in said cases, Joseph E. Hudak, and Sharon Lavelle, a/k/a/ Sharon Hudak, (hereinafter "the Hudaks") did not appear. One of the plaintiffs in those proceedings, Robert Woods, did appear, and presented evidence before Judge Doyle. On June 23, 1989, Judge Doyle rendered a non-jury verdict of \$782.06 plus interest from September 1, 1987 against the Hudaks, and for the Petitioner Woods, and Geraldine E. Woods, and dismissed the counterclaim of





the Hudaks, in the case filed in that court at A.D. No. 1676 of 1988. (A-21). On June 26, 1989, Judge Doyle rendered a non-jury verdict of \$653.28 with interest from December 10, 1987 against Sharon Lavelle, a/k/a Sharon Hudak, and for the Petitioner Woods and Geraldine E. Woods, and dismissed the counterclaim of Sharon Lavelle a/k/a Sharon Hudak, in the case filed in that court at A.D. No. 1675 of 1988. (A-22)

The Hudaks filed two (2) Petitions to Open Judgment, claiming primarily that they never received notice of the non-jury trials, and presented the Petitions before Judge Doyle. The Hudaks never filed Post Trial Motions for Relief under Pa. R.C.P. 227.1. Relying on the fact that the Notice of Hearing was duly published in the Pittsburgh Legal Journal, and that the Hudaks had filed no



Post Trial Motions, Judge Doyle denied both Petitions to Open Judgment, and refused to grant a rule to show cause why the judgments should not be opened. (A-23 to A-24) Judgment was entered on both non-jury verdicts.

After execution began on the judgments as specified in the Statement of Facts below, Hudak filed an "Emergency Motion" on July 25, 1989, to stay the state court executions against him. (A-25) The Respondent Rosenberg temporarily stayed the executions until the hearing on July 27, 1989. (A-32 Geisler filed a response to the Emergency Motion. After the hearing on July 27, 1989, the District Court granted the temporary restraining order by Order and Opinion dated July 28, 1989. (A-36) On August 8, 1989, the District Court converted the temporary



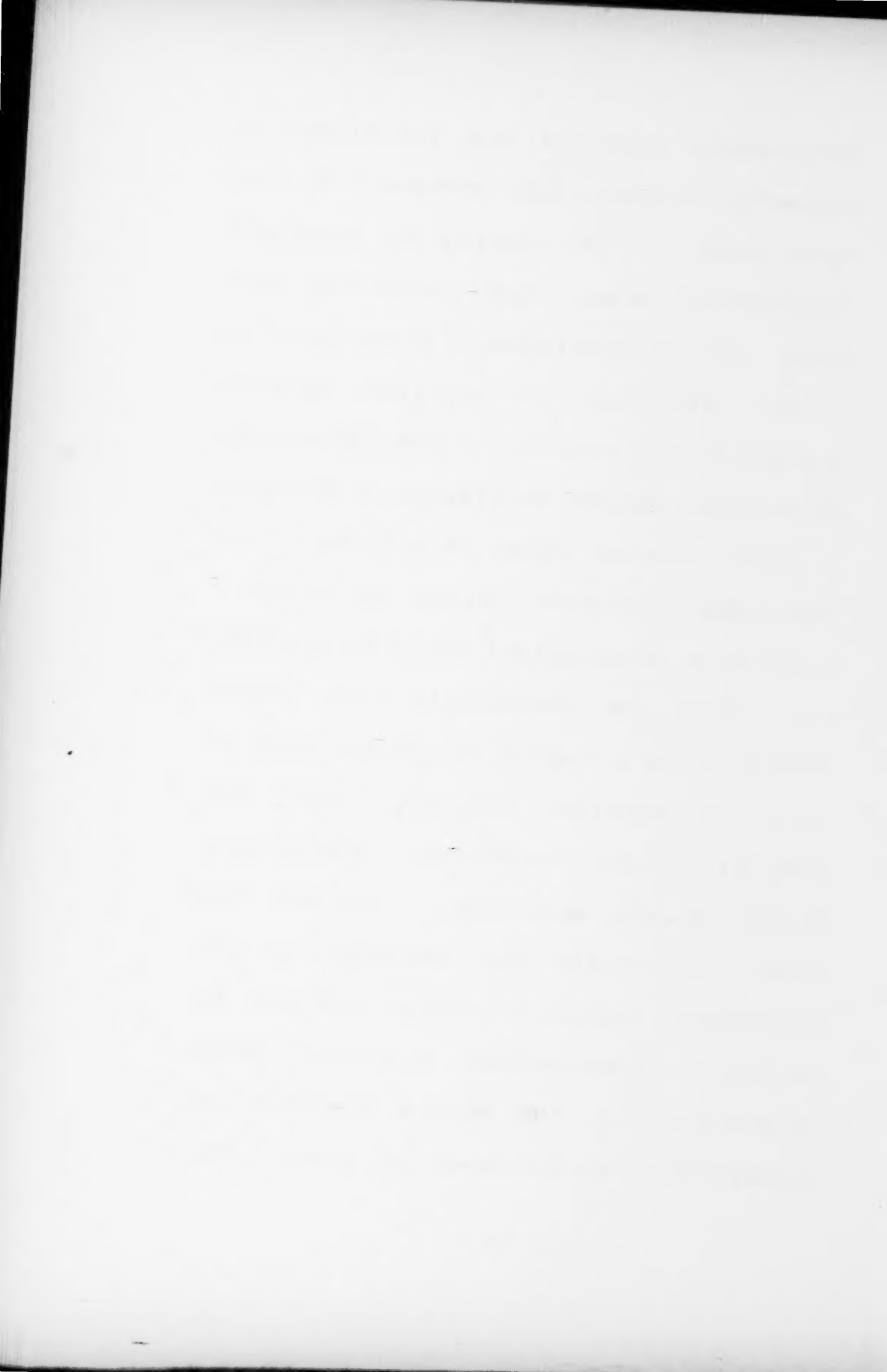
restraining order into a preliminary injunction. (A-51) The Petitioner Woods appealed that decision this Honorable Court on August 10, 1989. On August 11, 1989, Judge Doyle issued an Opinion in support of his prior orders denying the Hudaks' Petitions to Open Judgment. (A-54) On February 23, 1990, the United States Court of Appeals for the Third Circuit reversed Respondent Rosenberg's granting of a preliminary injunction at No. 89-3557. (A-109)

c. The 42 U.S.C. § 1983 action.

On October 23, 1989, the Petitioner filed a Complaint, a civil rights action under 42 U.S.C. § 1983, which averred that acting under color of law and under their authority as public officials of the United States District Court, the



Respondents deprived the Petitioner of property without due process of law, specifically, in issuing a temporary restraining order, and converting said order into a preliminary injunction, in clear absence of subject matter jurisdiction. (A-61) The Defendants filed their Motion to Dismiss on November 3, 1989 raising three objections: (1) That the Complaint failed to state a claim upon which relief could be granted, (2) That the Respondents were immune from suit as a result of the doctrine of judicial immunity, and (3) That the Complaint was vexatious, meritless, frivolous and malicious. (A-101) The lower court case was assigned to the Honorable District Judge William W. Caldwell (hereinafter "District Judge Caldwell"), of the Middle District of Pennsylvania on November 15, 1989. The





Petitioner filed a Response to the Motion to Dismiss on December 22, 1989. (A-105) On February 5, 1990 District Judge Caldwell entered a Memorandum and Order dated February 1, 1990, granting the Defendant's Motion to Dismiss with prejudice. (A-1) The Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit on February 23, 1990. On June 28, 1990 the United States Court of Appeals affirmed District Judge Caldwell's order, without opinion. (A-10)



## REASONS FOR GRANTING WRIT

- I. THE DISTRICT COURT LACKED  
SUBJECT MATTER JURISDICTION  
TO STAY A STATE COURT  
EXECUTION.

Whether a court has jurisdiction over a non-federal claim between non-diverse parties is determined by a two-stage analysis. Owen Equipment Co. v Kroger, 437 U.S. 365, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978). Aldinger v. Howard, 427 U.S. 1, 96 S.Ct. 2413, 49 L.Ed.2d 276 (1976).

First, one must inquire into whether the Constitution gives the District Court power to adjudicate the dispute, for which the test is whether the claims present "a common nucleus of operative fact...such that a plaintiff would ordinarily be expected to try them all in one judicial proceeding." United Mine



Workers v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1136, 1138 16 L.Ed.2d 218 (1966).

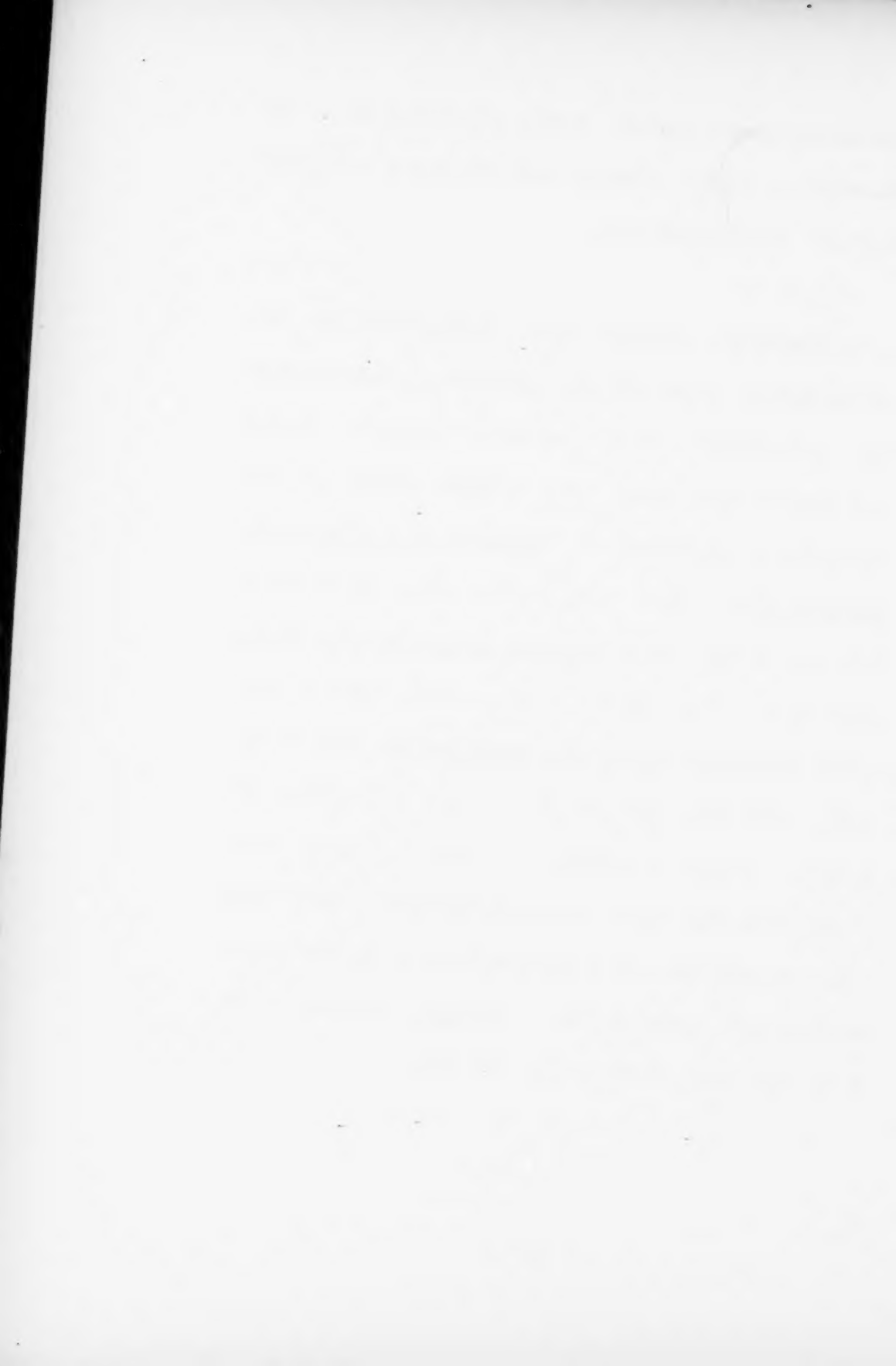
Secondly, "there must be an examination of the posture in which the non-federal claim is asserted and of the specific statute that confers jurisdiction over the federal claim, in order to determine whether congress in (that statute)" has... expressly or by implication negated" the exercise of jurisdiction over the particular non-federal claim." Owen Equipment, supra, 437 U.S. at 373.

The District Court lacked subject matter jurisdiction over a state court execution pursuant to an assumpsit claim. During the pendency of the involuntary bankruptcy proceeding subject matter jurisdiction existed. Once the



bankruptcy case was dismissed, in November, 1987, there was no more subject matter jurisdiction.

A federal court has jurisdiction to effectuate its prior orders, regardless of whether the court would have jurisdiction over the claim were it an original action. Dugas v. American Surety Co., 300 U.S. 414, 428 52 S.Ct., 521 81 L.Ed. 720, Local Loan Co. v. Hunt 292 U.S. 234, 239, S.Ct. 695, 697 L.Ed. 1230 (1934); Root v. Woolworth 150 U.S. 401, 410-12, 14 S.Ct. 136, 138-139, 37 L.Ed. 1123 (1893). This rule was "subject to the qualification that the relief not be of a different kind or on a different principle. Dugas, supra, 300 U.S. at 428, 575 S.Ct. at 521.





However, in this case, the court could not effectuate its prior order, in that the Consent Order of October 1, 1987, on which the court relies, states clearly in its paragraph 15:

"15. Nothing in the Order shall prohibit any party from pursuing any legal remedy for which he is entitled under the law."

Therefore, because the District Court already allowed the parties to pursue legal remedies, the execution could not in any way be a contempt of the Consent Order of October 1, 1987.

The Court of Common Pleas of Allegheny County, Pennsylvania already determined that the judgments entered against the Hudaks were valid. The state court determined that the Hudaks had notice of the arbitration appeals. The state court



also determined that the Hudaks did not preserve any of the issues they complained of in the state court for appeal as they was required to do by state court rules. When the Hudaks lost because of this mistake, they came flying into federal court before Respondent Rosenberg with an emergency motion.

Respondent Rosenberg allowed the Hudaks to relitigate all of the issues determined in state court. Respondent Rosenberg made a finding that the execution was a continuation of the conduct already proscribed by his prior orders, but made no finding of contempt.

The United States Court of Appeals for the Third Circuit stated in its opinion at No. 89-3557 reversing the Respondent Rosenberg's order as follows:



"The basis for the district court's order is puzzling. If it were based on a violation of its earlier orders, as the district court implies, one would think that a contempt order would have been sought. But, on the assumption that the injunction was warranted on some theory of interference with the operation of the federal court orders, it is not apparent to us how a dispute as to the adequacy of a notice of hearing in the Court of Common Pleas was a matter for federal cognizance. Indeed, it seems particularly strange for us that the injunction was to be operative 'until further order of this court, pending resolution of the Defendant's appeal in the state court' Assuredly, the matter of a stay of execution on a state court execution on a state court judgment pending review in a higher state court, without more, cannot justify federal court intervention."

The words "federal cognizance" above are easily equated with "federal subject matter jurisdiction". The Circuit Court's reversal of that lower court decision could be interpreted only one way. Respondent Rosenberg lacked



subject matter jurisdiction over the matter being stayed, i.e. the state court action.

II. A DISTRICT COURT JUDGE WHO ACTS IN CLEAR ABSENCE OF SUBJECT MATTER JURISDICTION IS NOT PROTECTED BY THE DOCTRINE OF JUDICIAL IMMUNITY.

District Judge Caldwell, in his memorandum opinion dismissing the Petitioner Woods' Complaint, stated that the Petitioner Woods' claim of clear absence of subject matter jurisdiction is without merit. Judge Caldwell cites the Circuit Court's determination, in a prior appeal, that Respondent Rosenberg had jurisdiction over the bankruptcy matter and the contempt proceeding. However, the acts of the Respondents sued upon in the Complaint concerns neither the bankruptcy action nor the contempt





proceeding. The Complaint states a cause of action against District Judge Rosenberg and his staff for their conspiracy to deprive Woods of his right to due process as a result of their conspiracy to contrive the issuance of injunction of the state court execution.

Two state court judgments were won fairly and properly. Execution began on those judgments. The Hudaks attempted to open the judgments before state court Judge Doyle. Judge Doyle properly denied those motions. The Hudaks then ran to the Respondent Rosenberg's court screaming that here was another instance of a violation of the said Contempt Order, with an self-styled "Emergency Motion". Respondent Rosenberg granted the stay, apparently attempting to tie the executions to the Contempt Order by



calling them a continuation of conduct previously proscribed, and using reasoning subsequently described by the Circuit Court as being "puzzling". The Circuit Court also noted that no Motion for Contempt was filed by the Hudaks, and no determination of contempt was made.

If this order was to effectuate the Defendant's prior orders, why was no determination of contempt made or sought? The truth lies in the facts stated early in Petitioner Woods' Complaint. Respondent Rosenberg and his staff were biased against the Petitioner Woods, and Respondent Rosenberg would have signed any motion Hudak would have presented to him, no matter that there was no ~~subject~~ matter jurisdiction.



The Respondents cited numerous cases in their Memorandum in support of their Motion to Dismiss Complaint, all prisoner complaints, and in all of the cited cases, there can be no question that the doctrine of judicial immunity applies. To lump Petitioner Woods' case with these obvious cases would be easy, but completely improper. The actions of Respondent Rosenberg and his staff were outrageous and completely actionable.

District Judge Caldwell cites the case of Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, L.Ed.2d 331 (1978), as authority for Respondent Rosenberg's judicial immunity. The Stump court also reaffirmed the exception that a judge who acts in the absence of subject matter jurisdiction may be held liable for his judicial acts. Stump v. Sparkman, supra.



Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872). In Bradley v. Fisher, supra, the exception was clearly stated as follows:

"Where there is clearly no jurisdiction over the subject-matter any authority exercised is an usurped authority, and for the exercise of such authority, when the want of jurisdiction is known, no excuse is permissible."

The acts of Respondent Rosenberg were not intended to enforce his prior orders and the Circuit Court has agreed as stated previously in their Opinion reversing Respondent Rosenberg's preliminary injunction. They were intended to deprive the Petitioner Woods of his right to execute upon his judgments, without due process of law. The acts of Respondent Rosenberg's staff likewise would lose their immunity.





To permit Respondent Rosenberg to tie the state court executions to the Contempt Order would be to permit constant federal meddling in state court actions, with impunity. Case law is clear that the doctrine of judicial immunity does not apply when there is a clear absence of subject matter jurisdiction. Such a case exists here. To hold otherwise would be to eliminate the Bradley exception completely.

The argument could also be made that Respondent Rosenberg was acting merely in excess of jurisdiction. Stump v. Sparkman, supra, illustrates the difference between absence of subject matter jurisdiction and excess of jurisdiction. Lack of jurisdiction is where a probate judge, with jurisdiction



over only wills and estates, would try a criminal case. Excess of jurisdiction is where a criminal court judge would try a defendant of a non-existent crime. The problem is not that Respondent Rosenberg ruled incorrectly. If a bankruptcy case was still in effect, or if a Motion for Contempt had been presented and considered, and a contempt determination made, District Judge Rosenberg's decision, however incorrect, would be immune. The problem is that a state court action was stayed by Respondent Rosenberg simply because there existed personal jurisdiction from a federal proceeding involving the same parties.

The principle has also been enunciated that the question of judicial immunity should not turn on fine questions of jurisdiction. Sullivan v. Kelleher, 405



F.2d 486, 487 (1968); Williams v. Sepe, 487 F.2d 913 (1973); Jacobson v. Schaefer, 441 F.2d 127 (1971); Orlando v. Wizer, 443 F. Supp. 744 (1978). All of the above cited cases turn on the same question of excess of jurisdiction. In other words, the judges sued were judges of general jurisdiction. In contrast the federal courts are courts of limited jurisdiction. The matter had no business even being before the Respondent.

Respondent Rosenberg knew well enough what the limits of his subject matter jurisdiction were. The imposition by Respondent Rosenberg of an injunction against Petitioner Woods from executing upon a valid state court judgment was a usurpation of state judicial power. To hold that Respondent Rosenberg was acting within his "judicial capacity"



when this Honorable Court has already determined that no subject matter jurisdiction existed, would be pure chicanery. The bankruptcy proceeding which started the case had long since been dismissed. None of that jurisdiction existed. The court's power to enforce its prior orders could not be invoked, because, the Consent Order allowed all parties to pursue their legal actions, and no contempt order had been sought. The temporary restraining order and preliminary injunction did not hold anyone in contempt. Therefore they were not entered to vindicate the Court's authority. There was no subject matter jurisdiction. If there was no subject matter jurisdiction, there could be no judicial capacity. Therefore there can be no judicial immunity.





CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'R. Woods', with a long horizontal flourish extending to the right.

Robert Woods, Petitioner